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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,563	10/23/2003	Frederic Legrand	05725.1255-00	6452

22852 7590 12/30/2009  
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EXAMINER
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VENKAT, JYOTHSNA A

ART UNIT	PAPER NUMBER
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1619

MAIL DATE	DELIVERY MODE
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12/30/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

Claims 1-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of WO 02/051,369 ('369) and U.S. Patent 4,927, 627 ('627).

**The examiner is relying on English equivalent of WO document, which is PGPUB US 2004/0074015 ('015).** Applicant's submitted certified English translation of foreign priority document on 10/29/07. The publication date of WO document is July 4, 2002 and this date is before the effective filing date of the instant application, which is October 23, 2002.

PGPUB '015 teaches oxidizing compositions using claimed cross-linked amphilic polymer and claimed hydrophobic unit. See paragraphs 27-88 for detailed description of the claimed amphilic polymer and claimed hydrophobic unit (claims 2-16). See paragraphs for detailed description of the oxidizing agent and see paragraph 97 for the claimed stabilizer, see paragraphs 218-220 for anionic and non-ionic surfactants.

PGPUB teaches the limitations of claims 17-22 at paragraphs [0067-0079], teaches the limitation of claim 23 at paragraphs [0051-0053], teaches the limitation of claims 24 at paragraph [0054], teaches the limitation of claim 25 at paragraph [0055], teaches the limitations of claims 26-29 at paragraphs [0058-0059], teaches the limitations of claims 31-36 at paragraphs [0080-0082], teaches the limitations of claims 37-43 at paragraphs [0089-0091], teaches the limitations of claims 44-46 at paragraph [0094], teaches the limitations of claims 52-54 at paragraphs [0216-0232], teaches the limitation of claim 60 at paragraph [0096], teaches the limitations of claims 56-58 at paragraphs [0097], teaches the limitations of claims 55-56 at

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paragraphs [0253]. The difference between WO document and instant application is WO document does not teach oxidizing oil-in-water emulsion and claimed fatty alcohol.

Patent '627 teaches hydrogen peroxide emulsions for bleaching hair. Patent teaches at col.2, lines 34-45 teaches hydrogen peroxide in the form of oil-in-water (o/w) emulsions and at col.3, line 18 teaches the concentration of the hydrogen peroxide, which is the oxidizing agent claimed. Patent at col.2, lines 51-65 teach anionic and nonionic surfactant and mixture of these surfactants. See also col.3, lines 8-17. Patent at col.2, lines 56-50 teaches the claimed fatty alcohols and in examples teaches cetyl alcohol claimed. Patent at col.3, under (f) teaches claimed stabilizers and under (g) teaches adding buffer agents so that pH is 3-5. See examples for additives.

Accordingly it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the compositions of 'WO document using having oxidizing agent, surfactant, stabilizer, amphilic polymer of formula I and hydrophobic unit and combine it with fatty alcohol expecting beneficial effect. One of ordinary skill in the hair care art would be motivated to prepare the compositions in the form of cream emulsion with the reasonable expectation of success that it is easier to apply the bleaching compositions in the form cream instead of hydrous as the compositions can be applied onto hair easily and it won't run off and bleaching the hair can be performed effectively. One of ordinary skill in the art would be motivated to add fatty alcohol in emulsions with the reasonable expectation of success that the viscosity of the emulsions can be controlled by means of fatty alcohol. This is a prima facie case of obviousness.

***Response to Arguments***

Applicant's arguments filed 12/2/09 have been fully considered but they are not persuasive.

Applicants argue that WO '369 teaches away from using any other formulations beside transparent gel and WO '369 at [0011] discourages the use of any other formulation including creams and since WO '369 clearly limits itself to transparent gels. Applicants' also argue that WO '369 touts the superiority of transparent gels and notes that cosmetic formulations in the form of transparent gels have been sought for many years and are appreciated by consumers for esthetic reasons and for ease and comfort of use at [0015]. Because WO '369 clearly limits itself to transparent gels and disparages other systems, the disclosure of the WO '369 does not motivate, but actually leads away from the '672 patent, which teaches the use of a cream emulsion. Such a teaching away reveals the absence of a prima facie case of obviousness, because a motivation to combine the references the disclosure of WO '369 does not motivate, but actually leads away from the '627 patent which teaches the use of cream emulsions.

In response to the above argument, a prior art reference that "teaches away" from the claimed invention is significant factor to be considered; however, "the nature of the teaching is highly relevant and must be weighed in substance. A known or obvious composition does not become patentable simply because it has been described as some what inferior to some other product for the same use." *In re Gurley*, 31 USPQ2d 1130, 1132.

Therefore, PGPUB, which is English equivalent of WO'369 at [0003], teaches that bleaching compositions are mainly in the form of powders or creams. Thus the claimed

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formulations have been conventionally used for bleaching keratin fibers. Applicants' attention is also drawn to paragraph [013] of instant application.

*[013] In these cosmetic applications, the oxidizing compositions can usually be formulated in the form of oil-in-water (O/W) emulsions based on fatty alcohol and nonionic or anionic surfactant, so as to optimize the application and use qualities of the dyeing, bleaching or permanent-reshaping compositions comprising them, and, for example, in order for them to have a sufficient consistency so as not to run outside the zones of the head of hair or locks of hair to be treated.*

Therefore one of ordinary skill in the hair care art would prepare the compositions of WO document using oxidizing agent, surfactant, stabilizer, amphilic polymer of formula I and hydrophobic unit and combine it with fatty alcohol taught by patent '627 and use it in the form of oil-in-water emulsions taught by patent '627 for bleaching keratin fibers and also admitted by PGPUB at [003] that creams which are emulsions have been used for bleaching keratin fibers with the reasonable expectation of success that emulsions exhibit improved depth of color and brightness taught by patent '627 at col.1, ll 53-64.

Therefore 103 rejection is deemed proper.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JYOTHSNA A. VENKAT whose telephone number is 571-272-0607. The examiner can normally be reached on Monday-Friday, 10:30-7:30:1st Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EYLER YVONNE (BONNIE) can be reached on 571-272-0871. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JYOTHSNA A VENKAT /  
Primary Examiner, Art Unit 1619